

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA**

In re: Baycol Products Litigation

UNITED STATES OF AMERICA *ex rel.*
LAURIE SIMPSON,

Honorable Michael J. Davis
United States District Court Judge

Plaintiff,

v.

BAYER HEALTHCARE
PHARMACEUTICALS, INC.;
BAYER CORP.; and
BAYER A.G.,

MDL No. 1431
Civil No. 08-5758-MJD-ECW

Defendants.

**JOINT STIPULATION TO MODIFY AMENDED PRETRIAL
SCHEDULING ORDER PURSUANT TO L.R. 16.3**

Pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure and Local Rule 16.3, the Parties respectfully request that the Court modify the Amended Pretrial Scheduling Order (Dkt. No. 221), by extending the schedule by a period of ninety (90) days, for the reasons described herein.

LEGAL STANDARD

Under Rule 16(b)(4) of the Federal Rules of Civil Procedure, a pretrial scheduling order may be modified for good cause. Local Rule 16.3(b)(1) states that “[a] party that

moves to modify a scheduling order must...establish good cause for the proposed modification. L.R. 16.3(b)(1). “The primary measure of good cause [under Rule 16(b)(4)] is the movant’s diligence in attempting to meet the order's requirements.” *Rahn v. Hawkins*, 464 F.3d 813, 822 (8th Cir. 2006).

DISCUSSION

The Amended Pretrial Scheduling Order provides a deadline for the completion of fact discovery on September 28, 2020. Since the Parties’ last Joint Status Report (Dkt. No. 220), Relator has made her final production of documents to Bayer on May 1, 2020 and both Parties are working on the completion of privilege logs. In addition, the DoD has made two additional productions of documents, which Relator received on March 20, 2020 and on June 23, 2020.

Although the Parties have cooperated to facilitate production of documents expeditiously, and have each made several productions consisting of thousands of documents responsive to the requests on them, the Parties continue to meet and confer regarding categories of documents responsive the document requests.

In addition, on July 15, 2020, Relator served a notice of deposition on Bayer pursuant to Federal Rule of Civil Procedure 30(b)(6) related to Bayer’s communications with the Department of Defense related to Baycol’s safety and also provided Bayer with a non-exhaustive list of potential fact witnesses. The Parties are also meeting and conferring regarding these proposed depositions and are negotiating a deposition protocol. In light of the foregoing, the Parties believe that good cause exists to extend all

current deadlines by a period of 90 days to allow the Parties to complete discovery, including finalizing deposition protocols, facilitating the preparation and taking of depositions of fact witnesses that are dispersed in various states across the country, and resolving all remaining document discovery issues.

CONCLUSION

In light of the foregoing, the Parties request that the Court grant their Joint Stipulation to Modify Amended Pretrial Scheduling Order Pursuant to L.R. 16.3 and enter the Proposed Order to Modify Amended Pretrial Scheduling Order Pursuant to L.R. 16.3.

Dated: August 21, 2020

Respectfully submitted,

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